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October 30, 1995

HAND DELIVERY

Dawn Odrowski, Esquire
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Office of the General Counsel
Federal Election Commission
999 E Street, NW
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OCT 30 8 23 PM '95

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

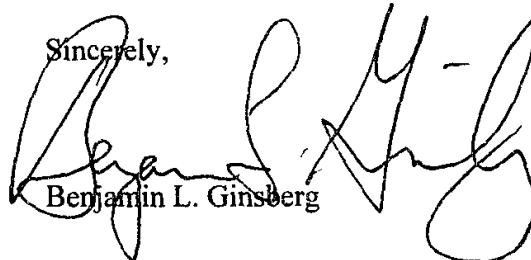
Re: MUR 3774 -- National Republican Senatorial Committee and
Stanley Huckaby, as treasurer

Dear: Ms. Odrowski and Ms. Stein:

Attached for filing please find the Response of the National Republican Senatorial and Stanley Huckaby, as treasurer, to the Federal Election Commission's Factual and Legal Analysis in the above captioned matter.

Also attached is a copy of a non-federal contribution by the NRSC to the Eastern High School Choir on June 5, 1995. It is should be included as part of the NRSC's Response to questions 3 and 10 of the Commission's subpoena.

Sincerely,



Benjamin L. Ginsberg

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)

MUR 3774

)

National Republican Senatorial Committee and
Stan Huckaby, as treasurer

)

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OCT 30 8 23 PM '95

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RESPONSE OF NATIONAL REPUBLICAN SENATORIAL COMMITTEE
TO THE FEDERAL ELECTION COMMISSION'S
FACTUAL AND LEGAL ANALYSIS

I. INTRODUCTION

By spinning together a conspiracy theory based on incomplete facts and a proposed rule that has not yet been adopted and certainly was not in force at the time of the donations in question, the Federal Election Commission ("Commission") has found "an inference" that a series of legally permissible actions are a violation of the Federal Election Campaign Act ("Act") and the Commission's regulations.

As a matter of law, and a matter of policy, the Commission cannot, and should not, attempt to bar a national political party committee from making contributions from its non-federal accounts to non-partisan, non-profit 501(c)(3) and (4) organizations when those donations are given without any conditions other than that the funds cannot be used to influence a federal election.

This is especially so when the Factual and Legal Analysis ("FEC Analysis") upon which the Commission says it based its reason to believe finding contains nothing more than a theory

and, to be charitable, circumstantial evidence.¹² Indeed, the FEC Analysis includes no evidence that the ultimate use of the funds in any way violated the Act. In other words, not only did the NRSC not violate the Act by its arms-length donations, the FEC has provided no evidence that the ultimate use of the money was anything other than protected non-partisan, non-candidate specific activity that fully complied with all existing statutes and regulations.

At best, this action seems to be an attempt by the Commission to overlook the United States Supreme Court's decision in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). As evidenced by its inability to cite any authority, the Commission has never before (and certainly not since MCFL) found that arms-length donations to non-partisan, non-profit 501(c)(3) and (4) organizations are a violation of the Act and Regulations. Accordingly, the Commission is attempting here to use an enforcement action to announce new policy, a technique that has been ruled impermissible. *General Elec. Co. v. U.S. E.P.A.*, 53 F.3d 1324, 1329-30 (D.C. Cir. 1995).

There is no violation of the Act or regulations here and this matter under review should be dismissed by the Commission.

II. FACTS

Pursuant to the Act and regulations, the NRSC raises both federal and non-federal funds. See NRSC Response of April 6, 1995 at 3. The NRSC historically has made donations from its

¹² The only shred of evidence the Commission can cite is an off-the-cuff public remark by former NRSC Chairman Phil Gramm at a lunch with reporters. Senator Gramm realized he had misspoken almost immediately following the lunch and promptly called the newspaper to set the record straight. See NRSC Response of April 6, 1995 and Affidavit of Senator Phil Gramm. It is not clear what point the FEC Analysis is trying to make, or could make, about Senator Gramm's comments on ABC's This Week with David Brinkley. FEC Analysis at 16.

non-federal accounts to a variety of non-partisan, non-profit organizations established under section 501(c) of the Internal Revenue Code.^{2/} As such, these organizations are exempt from taxation and are permitted to engage in non-partisan voter education and registration activities. 26 U.S.C. § 4945. They are prohibited, however, from influencing federal elections.

A series of these donations is now being questioned by the Commission in this matter under review. All of the funds donated came from the NRSC's non-federal accounts and were reported by the NRSC on its reports filed with the Commission. Affidavits of Sonya M. Vazquez ("Vazquez Aff.") at ¶ 3 and Maureen Goodyear at ¶ 3, attached to NRSC April 6, 1995 Response.

All of the donations questioned by the Commission were solicited by the organizations who ultimately received the funds. *See*, NRSC Response to FEC Subpoena ("Subpoena Response") 2a. Moreover, all of the donations were consistent with the NRSC's historical pattern of making donations from its non-federal account to a wide variety of non-partisan, tax exempt organizations. *See* Subpoena Response at 2; Vazquez Aff. at ¶ 2. The NRSC donates to these groups because it approves of each organization's overall positions and programs. Subpoena Responses 2c, 2d. The NRSC has never asked for, or received, any guarantees that its donations would be used for any specific purpose, nor was there any specific understanding of how the funds would be used by the recipient groups. Subpoena Responses 2a, 2d, 2e. In direct contradiction to the FEC's premise in this action, each NRSC donation is accompanied by a

^{2/} In another context, the Federal Election Campaign Act ("Act") specifically cites organizations established under section 501(c) of the Internal Revenue Code as proper sources of excess funds from political committees. Since 2 U.S.C. § 439a states specifically that excess funds from candidate committees may go without limit to 501(c) organizations, the Commission presumably is not challenging the groups here as impermissible entities to receive funds from a political committee. Furthermore, section 439a governs federal account activity. Because the NRSC can, as a national party committee, raise non-federal funds, the Act cannot prohibit non-federal donations to organizations established under section 501(c).

cover letter to the recipient containing a specific earmark -- that the funds not be used to influence any federal election. *Id.*

The NRSC was as explicit as it possibly could be that its donations were not to go towards any activity involving federal elections or candidates. *See* Cover Letters, Subpoena Response 3. The NRSC policy was to send a cover letter with each donation stating that use of the NRSC money "in any way to influence a federal election is strictly prohibited." Subpoena Response 3. The NRSC policy concerning all of the donations inquired about in the Commission's subpoena was to send them with a cover letter which contained language similar to those from the NRSC's then-general counsel, Edwina Rogers, which have been turned over to the Commission:

The National Republican Senatorial Committee routinely makes contributions to charitable and tax-exempt organizations such as the National Right to Life Committee. This contribution to your organization should be used for good government activities that are consistent with your organization's not-for-profit character. Please note that utilizing any of this money in any way to influence a federal election is strictly prohibited.

III. DISCUSSION

A. The FEC Fails to State a Violation of the Existing Law.

The FEC Analysis circumstantially links together a series of permissible activities and pronounces them a violation. The simple fact is that nothing in the Act or regulations prohibits a national political party committee from making an unencumbered donation to a non-partisan, non-profit 501(c)(3) or (4) organization from reported non-federal funds. This is especially true when, as here, there is no evidence (or charge) that the ultimate activity violated the Act and the

donations are accompanied by a letter specifically instructing that the funds not be used to influence any federal election. If the FEC believes such activities should not be permissible, it is certainly free to enter into the rulemaking process.^{3/} But it cannot use an enforcement action such as this one to introduce a new reading of the law. *General Electric Co. v. U.S. E.P.A.*, 53 F.2d at 1329-30.

The Commission's premise is that the purpose of these donations was to influence a federal election. The FEC Analysis cites the timing of the donations, the near exhaustion of coordinated payments when the donations took place, the quickly-corrected statements of Senator Gramm concerning two 1994 Senate races, and the close nature and strategic importance of various races to conclude there must be a violation. Neither the facts nor the law support this premise.

1. The Underlying Facts Demonstrate that No Violation Occurred

The Commission infers that, since the donations came towards the end of a campaign at a time when the coordinated expenditures on behalf of candidates had largely already been made, these donations must be an attempt to skirt the coordinated limits. To the contrary, NRSC donations to charitable entities are made when excess funds are available. Typically, the fundraising cycle of a political committee is such that more funds are available closer to election day.^{4/} Therefore, the date of a donation by a political committee cannot be used as evidence of a

^{3/} See, discussion at p. 9, *supra*.

^{4/} The Commission cannot mean that proximity to an election is a factor in whether a donation to a 501(c) organization violates the Act. If so, the Commission would appear to be saying that the very same donation to the very same group would be permissible at some unspecified date sufficiently far away from election day. Would that be two weeks? two months? six months? one year? In any event, 2 U.S.C. § 439a, which permits the donation of excess candidate committee funds to 501(c) organizations, includes no time period in which such donations are not permitted.

violation. Furthermore, since the Analysis fails to show that any of the donations were made on behalf of candidates or involved express advocacy, the Commission's position that these donations should be classified as coordinated expenditures is without support. *See supra* at 11-12.⁵¹

The Commission also attempts to hang its theory on the "off-the-cuff" statements of Senator Gramm at a lunch with reporters, statements which Senator Gramm corrected within hours of the luncheon when he realized his statements were in error. Affidavit of Senator Phil Gramm ¶ 4, attached to NRSC April 6, 1995 Response. Despite Senator Gramm's "incorrect" statements, the actual facts remain uncontroverted that the donations in question were permissible donations from the NRSC's non-federal account to non-partisan, non-profit organizations. The donations were made to groups whose philosophy was compatible with the Republican Party's platform and were sent with the explicit instruction that the funds not be used to influence any federal election. Since the donations were sent without any conditions, their purpose was to strengthen the groups generally and to reinforce the groups' overall non-partisan activities and message. NRSC Response to FEC Interrogatories ¶¶ 2c, 2d; Ruth Marcus, GOP Donation Aided Right to Life Group, Washington Post, February 12, 1995 at A27. To reach its "inference" of a violation, the Commission chooses to ignore the clearest fact in the entire matter -- the cover letters which as a matter of policy accompanied each donation and stated explicitly that the funds not be used to influence any federal election.

⁵¹ It is puzzling why the FEC Analysis at 13 and note 6 refer to the activities of NRL PAC. NRSC made no donations to the NRL PAC. The NRSC did make donations to the National Right to Life Committee, but of course the donations to that 501(c) organization were accompanied by written instructions that the funds not be used to influence federal elections.

Furthermore, despite also overlooking the fact that the NRSC had no control over the ultimate use of its donations, the Commission still does not meet what should be its threshold test -- showing that any activity by the recipients violated the Act or regulations. *See FEC v. MCFL*, 479 U.S. 338; *Faucher v. FEC*, 743 F. Supp. 64 (D. Me. 1990), *aff'd* 928 F. 2d 468 (1st Cir. 1991), *cert. denied* 112 S. Ct. 79 (1991); *FEC v. National Organization for Women*, 713 F. Supp. 428 (D.C.C. 1989). This notion by the Commission that it can proceed without specifically stating any actual violations or articulating its reasons for a decision (other than an apparent feeling that something must be wrong) has met with disfavor by the courts. *E.g.*, *FEC v. NRSC*, 966 F.2d 1471 (D.C. Cir. 1992) (citing need in enforcement proceedings for explanation of Commission's reasons for acting); *Democratic Congressional Campaign Committee v. FEC*, 831 F.2d 1131 (D.C. Cir. 1987 (need for Commissioners to provide statement of reasons for their votes); *FEC v. Ted Haley Congressional Committee*, 654 F. Supp. 1120 (W.D. Wash. 1987), *rev'd on other grounds*, 852 F.2d 1111 (9th Cir. 1988) ("thoroughness, validity, and consistency of an agency's reasoning" are important factors to be considered by the court); *see also*, *Common Cause v. FEC*, 676 F. Supp. 2286 (D.D.C. 1986). The FEC Analysis falls far short in terms of producing any set of facts that result in a violation of the Act or regulations.

2. The Commission's Analysis Fails to Set Out Any Violations of the Act or Regulations.

In addition to the lack of facts with which to show a violation, the FEC Analysis fails to articulate what laws these donations might have violated. To make its case, the Analysis would have to show that the recipients of these donations were standing in the shoes of the NRSC and

making contributions or expenditures under the Act, and that the ultimate activity by these groups violated the Act. The Analysis fails to do this.

a. The NRSC had no control over the donations once they were made.

Other than believing its donations would aid the recipient groups generally, the NRSC made the donations with the knowledge that once the money was donated, the NRSC had no control over how it was used. NRSC Subpoena Response 2f. No preconditions were established as to how the funds were to be used, as was made clear in the cover letters which, as a matter of policy, accompanied each donation. *Id.*, see also Subpoena Responses 2c, 2d.

As a matter of law, the NRSC is entitled to assume that a 501(c) organization is using a donation within the scope of its charter and in a manner that complies with existing laws. Indeed, the NRSC's cover letters accompanying the donations specifically expressed the assumption that the donations would be used for "activities that are consistent with your organization's not-for-profit character." Subpoena Response 3. In this case, all the recipients had to comply with Internal Revenue Code requirements that they not engage in activities which influence federal elections. As such, if any improper use of the funds did exist (and there is no evidence of any such improper use), it would be contrary to the NRSC's explicit written instructions accompanying each donation and, therefore, not the NRSC's responsibility. In other words, since the NRSC did not have any control over the use of its donations, as is the case whenever the NRSC donates funds to a non-partisan, non-profit organization, it could not do anything about how the recipients ultimately used the funds. In fact, it is a fundamental tenant of jurisprudence relating to gifts to 501(c) organizations that a donor may not exercise any

significant control over the use of such funds. The NRSC is aware of and abides by this principle.

b. There is no evidence of improper coordination between the NRSC and the Recipients of the Contributions.

The FEC Analysis of the law states that "political party committees cannot use corporations as vehicles to make expenditures, which if made by the party itself, would be impermissible under the Act." Analysis at 7, *citing* 2 U.S.C. § 441a(a)(7)(B) and proposed Commission revisions to 11 C.F.R. § 114.4(d). Since the Analysis does not charge an impermissible expenditure, or even express advocacy, on behalf of any candidate by the recipient groups, there is no activity that can be "considered a contribution to a candidate". This is the touchstone of 2 U.S.C. § 441a(a)(7)(B), and without any evidence of such activity, there can be no violation of the Act or regulations.

Even more telling is the Analysis' reliance upon "proposed Commission revisions to 11 C.F.R. § 114.4(d)" which would prohibit corporate voter drives from being coordinated with a candidate, group of candidates or political party. Respondents stipulate that the Commission is currently attempting to change this regulation (which might or might not apply to recipients like the organizations here), but such reliance demonstrates why there cannot be a violation found in this matter.

Even if the Commission were to find that this situation provided improper contacts (and it should not), the Commission's own Analysis states that this regulation is only proposed. In other words, the Commission itself, by proposing a regulation that it says would cover this situation, cannot maintain that the regulations in place at the time of the alleged coordination

prohibited the minimal contacts that may have occurred. Given the Commission's own statements, pursuing this matter would violate the holding of *General Electric Co. v. U.S. E.P.A.*, 53 F.2d at 1329-30.

In addition, Respondents do not agree that even under the proposed regulations, the contacts here between the NRSC and the recipient groups or the regular briefings given by a political committee, *see* Subpoena Response 4, would present improper coordination under the standards articulated by the United States Supreme Court. *See Buckley v. Valeo*, 424 U.S. 1 (1976); *FEC v. MCFL*, 479 U.S. 238; *see also Faucher v. FEC*, 928 F.2d 468. The mission of the political party committees includes telling any interested groups and individuals (including the media) its analysis of upcoming elections. That type of speech cannot be taken away by the Commission. In this case, the NRSC gave a donation to non-partisan, non-profit organizations.^{6/} There were no strings attached to the donations, other than the specific instruction that the funds not be used to influence a federal election. Even assuming *arguendo*, that the contacts here are sufficient, and there are not, there is no allegation that the ultimate product is express advocacy.^{7/} Without proving this, any attempt to find a violation must fail:

^{6/} The Commission takes great interest in its distinction that while corporations may conduct non-partisan voter registration drives, it believes political party committees cannot. This is a distinction without a difference. The Commission does not contest that there is no limit on what a party committee may spend for a generic, non-candidate specific voter registration or get-out-the-vote drive (e.g. "vote Republican"). Under the Commission's interpretation, a party committee could purchase at fair market value the membership list of a 501(c) group, and send those individuals a "vote Republican" voter registration or GOTV message without limit. This message could be paid for either by allocating between the federal and non-federal account or, with a purely non-federal message ("Register and vote so that the Legislature can go Republican.") with all non-federal dollars. Given this, it is not clear what the Commission thinks it is trying to accomplish.

^{7/} Applying the coordinated expenditure limit to these donations would require the Commission, even under the most stringent ruling, to show that the spending resulted in a product involving "a clearly identified candidate and an electioneering message." *FEC v. Colorado Republicans Federal Campaign Committee*, 1995 WL 372934, *5 (10th Cir. 1995). No such clearly identified candidate or electioneering message has been presented by the Commission in this matter. Although it appears to be part of the Analysis' premises, *Colorado Republicans* does not stand for the proposition that any activity by a party committee in a state

The first amendment lies at the heart of our most cherished and protected freedoms. Among those freedoms is the right to engage in issue-oriented political speech. The highest court of this land has expressly recognized that as a nation we have a 'profound ... commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.' *New York Times v. Sullivan*, 376 U.S. 254 (1964). *Buckley* and *Massachusetts Citizens for Life* ensured that right for corporations as well as individuals by limiting the scope of the FECA to express advocacy.

Faucher, 928 F.2d at 472.

B. All of the NRSC's Activities are Permitted by Law and the Commission Presents No Evidence of Any Impermissible Activities.

The Factual and Legal Analysis seems to be based upon the spurious notion that just because the NRSC made a donation to a group that later engaged in protected activity in a state, those expenditures must be counted towards the NRSC's coordinated expenditure limits on behalf of candidates running in those states. This theory must fail, and this matter must be dismissed, because each of the NRSC's activities challenged here was permitted under the Act and regulations, and resulted in no activities that violated the Act and regulations.

1. The NRSC May Make Non-Federal Contributions to 501(c) Groups.

The Commission's Analysis suggests "an inference" that payments by the NRSC's non-federal account to non-partisan, non-profit 501(c)(3) and (4) groups were impermissible. However, the Commission does not challenge, because it cannot, that a political party committee such as the NRSC may donate to non-partisan, non-profit groups constituted under the Internal Revenue Code.

automatically counts towards the party's spending limits in that state.

Such donations are clearly permissible. *See* note 2, *infra* p. 3. The statute itself states that campaign committees' excess funds "may be contributed to any organization described in section 170(c) of title 26." 2 U.S.C. § 439a.^{8/} Accordingly, the contribution of money to a 501(c)(3) or (4) is permissible under the Act. There is no proscription in the Act or regulations on the timing of such a contribution.

The NRSC made two things clear about these contributions. First, that there were no strings attached. There is no evidence that the NRSC attempted to control how these funds were used. In fact, NRSC officials knew that they had no control over what use these groups made of the donations. Subpoena Response 2c, 2d. The second was the strict admonition in the cover letters that went with every contribution that these funds were not to be used to influence federal elections. Subpoena Response 3.

2. A Political Party Committee May Brief Outside Groups, Including the Media, on the Upcoming Elections.

One of the basic, core functions of a political party committee is briefing any and all groups and individuals who wish such information about the upcoming elections. These briefings, which are conducted routinely by both party committees, generally discuss all the races and naturally center on which elections will be the closest. These briefings are hardly secret. The same briefing given groups, PACs and individuals is also given to members of the media so that the party's position on events will be disseminated as widely as possible.

While there were so many briefings that NRSC personnel are not certain whether representatives of any of the groups at issue here may have received one, the representatives of

^{8/} The FEC's Analysis raises the interesting question, which it does not address, of what the Commission would do if a candidate took his excess funds and contributed shortly before an election to one of the groups mentioned in the complaint.

such groups would not have heard any information that they could not have read in the newspapers, heard on the radio, or seen on television. NRSC Response 4. Such a briefing can hardly transform a no-strings attached donation with the express instruction that it not be used to influence a federal election into an impermissible expenditure that violates the Act or regulations.

3. A 501(c)(4) May Publish Non-Partisan Voter Guides and Conduct Voter Registration and Get-Out-The-Vote Activities.

While the NRSC had no control over the use of its donated funds by the recipients, the Commission cannot establish a violation if the ultimate uses of the funds do not constitute a violation of the Act or regulations.

A series of United States Supreme Court and Court of Appeals cases have established the right of groups such as those named in this matter to use corporate expenditures to publish non-partisan voter guides and conduct non-partisan voter registration and get-out-the-vote drives. *See FEC v. MCFL*, 479 U.S. 238; *Faucher v. FEC*, 928 F.2d 468. Those cases have also established that the Commission does not have the authority to restrict issue advocacy; it may only restrict express advocacy. *MCFL*, 479 U.S. at 249; *Faucher*, 928 F.2d at 470; *see also* note 6, *infra*.

While the Commission has proposed a change in the regulations to bar improper "coordination" between the non-partisan groups and candidates or their agents, those regulations are still proposed. Accordingly, there is no bar to such conversations at the present, and there certainly was no bar during the election cycles at issue in this MUR. Even if the proposed regulations were in effect during the past election cycles, it is far from clear that any improper coordination occurred.

Furthermore, in *FEC v. Christian Action Network*, 1995 WL 416309 (W.D. Va. 1995), the court noted that the *Buckley* court's ruling was adopted to avoid a "semantic dilemma" in dealing with the issue of what constitutes express advocacy. "Thus, courts have been disinclined to entertain arguments made by the commission that focus on anything other than the actual language used...." *Id.* at *5. Certainly, in this matter, the FEC Analysis falls far short of demonstrating any activity that comes close to meeting this standard.

4. The NRSC May Donate From Its Non-Federal Account to Non-Partisan, Non-Profit Organizations

The Analysis does not, and cannot, question that the NRSC may make donations from its non-federal account to non-partisan, non-profit organizations. The donations were made to groups whose philosophy was compatible with the Republican Party's platform and were sent with the explicit instruction that the funds not be used to influence any federal election. Since the donations were sent with no strings attached, their purpose was to reinforce the groups' message. Contrary to some initial, inaccurate, off-the-cuff comments at a press lunch, what actually happened was permissible under the Act and regulations. *See* Ruth Marcus, GOP Donation Aided Right to Life Group, Washington Post, February 12, 1995 at A27. The initial comments by Senator Gramm, which he promptly corrected, are insufficient grounds for proceeding with an enforcement action and are wholly inadequate to satisfy the Commission's burden of proof that a violation occurred.

C. The FEC Cannot Find a Violation Since the NRSC Had No Control Over How the Recipients Used Its Donations, the Recipients Were Specifically Instructed to Not Use the Donations to Influence Federal Elections, and the FEC Has Not Demonstrated that the Ultimate Use Violated the Law.

The Commission must dismiss this action since the FEC Analysis is based on nothing more than circumstantial evidence used to develop a conspiracy theory that, in the final analysis, still does not yield any actions that violate the statute or regulations. The bottom line is that the NRSC made donations to non-partisan, non-profit organizations for legitimate purposes, retained no control over how the funds were used and provided, as a matter of policy, specific written instructions with each donation that its funds could not be used to influence any federal elections. Further, the Commission must dismiss this action because it cannot even offer any evidence that the recipient organizations ultimately engaged in activity constituting express advocacy. Subpoena Response 3. For that matter, the Commission has failed to offer any evidence that the recipients engaged in anything other than activities the United States Supreme Court has already ruled are protected.

For its part, the NRSC made the donations challenged here with the clear knowledge and understanding that the NRSC would have no control over how the donations were used by the groups. Responses to FEC Interrogatories ¶ 2d. The donations were made to aid the recipients' overall non-partisan activities and goals. *Id.*

Given these safeguards taken by the NRSC to ensure that its donations did not violate the Act, even if the recipients did engage in impermissible actions (which the NRSC does not believe they have), the Commission cannot find the NRSC committed a violation. The NRSC assumed, as it was entitled to, that the recipients would use the funds for activities consistent with their charter, which, as a matter of practice, includes compliance with the Internal Revenue

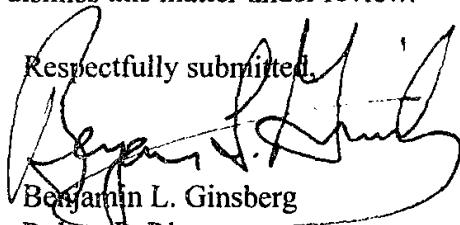
Code for 501(c)(4) organizations and all other applicable laws. The Code holds that such groups may not be involved in activities that influence federal elections.

Furthermore, numerous courts have held that donors cannot retain control of a donation to a 501(c) organization if that donation is to provide the full benefits of the law. *See, e.g., Gookin v. United States*, 707 F. Supp. 1156, 1158, 1159 (N.D. Cal. 1988). In other words, 501(c) organizations must, as a matter of policy and practice, have their donors relinquish dominion and control of their funds once the donation is made. *See Pauley v. United States*, 459 F.2d 624, 626 (9th Cir. 1972). The NRSC did not make these donations in expectation of a quid pro quo and believed they had given up all control over how the funds were used once its donations were made. *See Subpoena Responses 2 b, 2c, 2d; see also Hernandez v. Comm. of Internal Revenue*, 490 U.S. 680, 690 (1989). Therefore, even if the Commission could demonstrate some activity by the recipients that violates the Act (NRSC does not believe that any such activity took place), the NRSC took precautions to ensure that any such actions were clearly outside matters in which it was involved.

IV. CONCLUSION

For the foregoing reasons, the Commission should dismiss this matter under review.

Respectfully submitted,



Benjamin L. Ginsberg
Robert P. Ritger
Patton Boggs L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037
202-457-6405

**NATIONAL REPUBLICAN SENATORIAL
COMMITTEE**

NON-FEDERAL EXPENDITURES

425 2ND ST., NE.

WASHINGTON, DC 20002

SIGNET BANK

VIENNA, VA

Virginia

1337

JUNE 5

19 95

68-408/500 1411

PAY **FIVE THOUSAND AND 00/100***** DOLLARS \$ **5,000.00**

TO
THE
ORDER
OFEASTERN HIGH SCHOOL CHOIR
17TH & E. CAPITOL ST., NE
WASHINGTON, DC 20002
ATTN: JOYCE GARRETT

⑈00001337⑈ ⑆056004089⑆ 652⑈0169944⑈

NATIONAL REPUBLICAN
SENATORIAL COMMITTEE
NON-FEDERAL EXPENDITURESDETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE - FORM WVCP-2 V-2

DATE	DESCRIPTION	AMOUNT
06/05/95	CONTRIBUTION - 02-6070	5,000.00

NATIONAL REPUBLICAN SENATORIAL COMMITTEE
CHECK AUTHORIZATION FORM

Name & Address:

Eastern High School Choir
17th & E. Capital St., NE
Washington, D.C. 20002
ATTN: Joyce Garrett

Division:

Finance

Contact Person:

J. J.

Date:

5/31/95

Due Date:

6/2/95

Telephone No.:

P.O. Number:

Amount:

\$5,000

Account No.:

Purpose:

CONTRIBUTION (SEN. D'AMATO REQUEST)

FROM NON-FEDERAL ACCOUNT



IN BUDGET

The amount should be charged to the

02 - 6070

line(s) on my budget

line(s) on my budget

AUTHORIZED FOR PAYMENT

[Signature]
Division Director

Executive Director

Deputy Executive
Director

6/2/95
Controller

FOR ACCOUNTING PURPOSES ONLY



P.O. (FULL PAYMENT)



P.O. (PARTIAL PAYMENT)

VENDOR #:

ENTERED MANUAL CHECK ☐

Invoice #	Inv. Date	Inv. Total	G/L Code	YEC Code	Amount	PO #
TOTAL						

☐ Mail to Vendor

National Republican Senatorial Committee

SENATOR ALFONSE M. DAMATO
CHAIRMAN

JOHN D. HEUBUSCH
EXECUTIVE DIRECTOR

June 2, 1995

Ms. Joyce Garrett
Eastern High School Choir
17th & E. Capitol Street, NE
Washington, D.C. 20002

Dear Ms. Garrett:

On behalf of my Republican colleagues in the United States Senate, please extend my sincere thanks to the members of the Eastern High School Choir for honoring us with such wonderful music at our recent Senate-House Dinner. The choir is truly superb in every respect and we hope you will favor us in the future with your music.

Again, many thanks for making our dinner such a memorable occasion.

With kind regards,

Sincerely,



Senator Al D'Amato
Chairman

P.S. I am enclosing a contribution which I hope will be of help to your great choral program.

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